



Appeal Decisions

Site visit made on 20 February 2024

By A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal A Ref: APP/X2410/W/23/3324848

10 Upper Green, Loughborough, Leicestershire LE11 3SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Mark Bennett against the decision of Charnwood Borough Council.
- The application Ref P/22/2228/2, dated 14 December 2022, was approved on 9 February 2023 and planning permission was granted subject to conditions.
- The development permitted is described as a proposed single storey extension to the rear; brick wall joining garage to main house to the front; garage loft conversion with dormer window; loft conversion with two roof lights to the front, two dormers and one Juliet balcony to the rear without complying with conditions attached to planning permission Ref P/22/2228/2, dated 9 February 2023.
- The conditions in dispute are Nos 4, 5 and 6 which state:

Condition 4: A minimum of 2 car parking spaces, excluding the garage, shall remain available for the parking of vehicles within the curtilage of the dwelling. These spaces shall be of a hard bound material and shall have a minimum width of 2.4 metres and a minimum length of 5.5 metres. These spaces shall always remain available for the parking of vehicles and shall not therefore be used for any other purpose, at any time.

Condition 5: Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking and reenacting that Order, with or without modifications), no enlargement, improvement or other alteration shall be carried out to the roof of the dwelling other than the works approved as part of this application.

Condition 6: Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking and reenacting that Order, with or without modifications), no openings or windows shall be inserted in the north-western (side) elevation of the approved dormer window to the existing garage.

- The reasons given for the conditions are:

Condition 4: To ensure adequate off-street car parking, in the interests of highway safety and to comply with 'saved' Policy TR/18 of the Borough of Charnwood Local Plan (2004) and emerging Policy T3 of the Draft Charnwood Local Plan 2021-2037.

Condition 5: The carrying out of development of this type may create difficulties in terms of the overall appearance and character of the area. To ensure the development complies with Policy CS2 of the Charnwood Local Plan 2011-2028 Core Strategy, "saved" Policies EV/1 and H/17 of the Borough of Charnwood Local Plan (2004) and emerging Policy DS5 of the Charnwood Local Plan 2021-2037.

Condition 6: To minimise the effect of the development by preventing undue overlooking of nearby dwellings, in the interests of the privacy and amenity of nearby

residents. To ensure the development complies with Policy CS2 of the Charnwood Local Plan 2011-2028 Core Strategy, "saved" Policies EV/1 and H/17 of the Borough of Charnwood Local Plan (2004) and emerging Policy DS5 of the Charnwood Local Plan 2021-2037.

Appeal B Ref: APP/X2410/W/23/3324728

10 Upper Green, Loughborough LE11 3SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mark Bennett against the decision of Charnwood Borough Council.
 - The application Ref P/23/0656/2, dated 13 April 2023, was refused by notice dated 19 June 2023.
 - The development proposed is the erection of single storey side/rear extension, 3 dormers to rear, 1 dormer to front and 1 dormer to side/rear of garage. (Revised submission P/22/2228/2).
-

Appeal A: Decision

1. Appeal A is allowed and planning permission is granted for a proposed single storey extension to the rear; brick wall joining garage to main house to the front; garage loft conversion with dormer window; loft conversion with two roof lights to the front, two dormers and one Juliet balcony to the rear without complying with one of the disputed conditions attached to planning permission Ref P/22/2228/2, dated 9 February 2023, subject to the conditions in the attached schedule.

Appeal B: Decision

2. Appeal B is dismissed.

Appeals A and B: Procedural Matters

3. Since the appeal was lodged, a revised National Planning Policy Framework ('the Framework') has been published. This has not raised any new matters which are determinative to the outcome of this appeal. However, I have referenced the revised paragraph numbers, where necessary.
4. The Council's emerging local plan, The Draft Charnwood Local Plan 2021-37 ('the ELP') is at an advanced stage. Policy DS5 of the ELP had no unresolved objections and is consistent with the Framework and therefore, according to paragraph 48 of the Framework, I attribute significant weight to it.
5. At the time of my site visit, the property had been extended and altered in a similar, but not an identical way, as the proposed drawings. The Council suggests that these amendments were approved under planning permission P/23/1225/2. Consequently, I have considered the proposed development in accordance with the information before me, rather than what has been constructed on site, and determined the appeal on this basis.

Appeal A: Procedural Matter

6. Policy T3 of the ELP accords with the Framework but has unresolved representations. According to paragraph 48 of the Framework, I attribute limited weight to it.

Appeal B: Procedural Matter

7. The description of development in the banner heading for Appeal B above is taken from the Council's decision notice rather than the planning application form, as it more accurately reflects the proposal.
-

Appeal A: Background and Main Issues

8. Planning permission was previously granted subject to conditions for extensions and alterations to the dwelling under approval P/22/2228/2. The Council indicate that Condition 4 is reasonable and necessary to ensure sufficient off-road parking is available in the interests of highway safety; Condition 5 is reasonable and necessary to ensure the character and appearance of the surrounding area is not compromised by potential future roof alterations; and Condition 6 is reasonable and necessary to ensure the living conditions of the occupiers of 11 Upper Green are not harmed by the inclusion of a window within the approved box dormer.
9. The appellant objects to the last sentence of Condition 4 that requires the two off-road parking spaces to *"always remain available for the parking of vehicles and shall not therefore be used for any other purpose, at any time"* as it would prevent the storing materials, their children from playing games or the temporary placement of items on the driveway. They object to Condition 5's wording as it would prevent them from undertaking any work to the roofs of the dwelling, including maintenance. They object to Condition 6 as they consider its wording does not make sense.
10. Taking the above background into consideration, the main issues are the effect of the proposed development on the character and appearance of the surrounding area, highway safety, and the living conditions of the occupiers of 11 Upper Green, with particular reference to privacy.

Appeal A: Reasons

Character and Appearance

11. The appellant states that they have no objection to Condition 5 if it had been limited to the enlargement of the existing roofs. However, they assert that the inclusion of *"improvement or other alteration"* is unduly prohibitive as it would require them to submit a planning application to the Council for minor repairs and alterations to the roofs.
12. Condition 5 does not specify the Class of The Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO') to which it relates. Instead, it refers to the enlargement, improvement or other alteration to the roof of the dwelling. Schedule 2, Part 1, Class B of the GPDO relates to *"the enlargement of a dwellinghouse consisting of an addition or alteration to its roof"*, while Schedule 2, Part 1, Class C of the GPDO relates to *"any other alteration to the roof of the dwelling"*. Accordingly, Condition 5 could relate to the removal of both Classes B and C of the GPDO.
13. I do not accept that the wording of the condition would prevent the appellant from undertaking minor repairs or alterations to their roofs, as these works would likely be *de minimis*. However, the Council's Officer Report does not substantiate the reason for the imposition of the condition. Furthermore,

although the rear of the dwelling is visible from Brook Lane and therefore, an addition or alteration to the roofs of the dwelling would be readily discernible, it is unclear from the information before me, why the exercising of permitted development rights under Classes B and C would be unacceptable following the approval of the planning application. Accordingly, in respect of the six tests for conditions at paragraph 56 of the Framework, Condition 5 is imprecise, unreasonable and unnecessary.

14. Consequently, Condition 5 is not reasonable or necessary in the interests of the character and appearance of the surrounding area. The development without the condition is acceptable and as such, complies with Policy CS2 of the Charnwood Local Plan 2011-2028 Core Strategy, adopted 2015 ('the CS'), Saved Policies EV/1 and H/17 of the Borough of Charnwood Local Plan, adopted 2004 ('the LP'), and Policy DS5 of the ELP. These policies, amongst other things, require developments to make a positive contribution to Charnwood and respect and enhance the character of the area. It would also comply with the Council's Design Supplementary Planning Document, adopted 2020. It would not conflict with paragraph 139 of the Framework that requires development that is not well designed to be refused.

Highway Safety

15. It is not unusual for conditions requiring the provision of off-road parking spaces to be maintained free from obstruction to ensure they are available at all times. This is to ensure that vehicles do not pose a highway safety issue by parking on surrounding roads, particularly as the appeal site would not comply with the Council's vehicle parking standards. Temporary or short-term use of the parking spaces for other uses would unlikely to result in enforcement action by the Council, but the condition would allow the Council to enforce should the spaces become obstructed for an extended period of time.
16. The appellant's suggested re-wording of the condition's last sentence to, '*two car parking spaces shall be maintained within the curtilage of the property*' would not be precise or enforceable as it refers to cars rather than vehicles and does not require the spaces to be kept available for the parking of vehicles.
17. Consequently, Condition 4 is reasonable and necessary to protect highway safety. It would comply with Saved Policy TR/18 of the LP and ELP Policy T3 which, amongst other things, require development to include arrangements for off-street parking for vehicles to secure highway safety and minimise harm to visual and local amenities.

Living Conditions of Existing Occupiers

18. The box dormer to the side of the garage has been constructed. The rear garden of 11 Upper Green is immediately adjacent to the box dormer. Consequently, should a window be inserted within the box dormer, it could allow the occupiers of the room to overlook the rear garden of the neighbouring property which would result in harm to the living conditions of the occupiers of No 11. The condition would require details of any future window proposed to be inserted within the box dormer to be subject to planning permission. This would ensure that the Council could assess whether it would pose a harmful impact on the occupiers of the neighbouring property or otherwise. The condition is plain in its meaning and therefore its wording does not need to be changed for it to be understood.

19. Condition 6 is therefore reasonable and necessary to protect the living conditions of the occupiers of No 11, with particular reference to privacy. It would comply with CS Policy CS2, Saved Policies EV/1 and H/17 of the LP, and ELP Policy DS5 which, amongst other things, seek to protect the amenity of people who live nearby.

Appeal A: Conditions

20. For the reasons detailed above, I have removed Condition 5 as I have found that it is not reasonable or necessary, and I have re-attached Conditions 4 and 6. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also reinstate the conditions imposed on earlier permissions that continue to have effect. The Council, in their Officer Report, suggested that conditions for the commencement of development (Condition 1), the approved plans (Condition 2), and facing materials to closely match those on the existing dwelling (Condition 3) should be reinstated.
21. From my site visit, it is clear that some of the extensions/alterations permitted by the planning approval have been constructed and therefore, the development has commenced. Consequently, the standard condition relating to the commencement of development is not necessary. I have specified the approved plans for the avoidance of doubt and in the interests of proper planning and I have included the condition regarding materials, as some of the extensions/alterations proposed differ from those that have been constructed.

Appeal B: Background and Main Issue

22. Appeal B seeks amendments to the previously approved development¹ to include a front dormer window and a rear box dormer to the garage/single storey infill extension. The Council raise no objection to the proposed front dormer window, as it would be similar to other front dormer windows in the vicinity of the appeal site. Consequently, the main issue for Appeal B is the effect of the rear box dormer on the character and appearance of the surrounding area.

Appeal B: Reasons

23. The box dormer would be located on the rear roof slope of both the existing garage and the proposed infill extension and would adjoin an existing box dormer on the side roof slope of the garage, creating an L-shape. While the roof design of the dormer would not reflect the original dwelling, it would echo the roof design of the existing side dormer and therefore, would not be incongruous. However, the scale and massing of the proposed dormer projecting beyond the main body of the host dwelling's rear elevation with no gap to the eaves, would result in a bulky and discordant addition. Furthermore, the window within the proposed dormer would not align with the existing first floor windows and would be larger in size. Therefore, it would be inconsistent with the existing dwelling.
24. Brook Lane bounds the rear boundary of the appeal site with a grass verge planted with trees between the road and the boundary fence. The proposed

¹ Planning Ref P/22/2228/2

dormer would be clearly visible from Brook Lane. At the time of my site visit, there were no other examples of flat roofs or box dormers visible from the public realm on other dwellings in the surrounding area. While the host dwelling's existing box dormer was visible from the surrounding area, its siting ensured that it was not unduly prominent. Consequently, the proposed box dormer would appear out of character and alien within the street.

25. The appellant has indicated that the Council has recently cut back the vegetation on the grass verge behind the appeal site and has directed me to photographs showing the vegetation prior to its removal. I accept that the host dwelling's rear elevation is more prominent since the vegetation was cut back and that the vegetation could re-establish itself. However, the vegetation would likely take a significant time to grow to a sufficient height and density to screen the appeal site. Notwithstanding this, vegetation should not be used to screen an otherwise unacceptable form of development, and there is no guarantee that the Council would not maintain the verge in the future. Due to the cutting back of the roadside vegetation, the proposal would be visible all year round and not just in the winter months when the leaves have fallen from the trees.
26. The appellant asserts that the rear dormer would be permitted development under Schedule 2, Part 1, Class B of the GPDO. However, I have not been presented with a Certificate of Lawfulness of Proposed Development to confirm that the proposal would be permitted development. Furthermore, the edge of the enlargement closest to the eaves of the original roof would be less than 0.2m and I have nothing before me to demonstrate that it would not be practicable to achieve. Consequently, from the information before me, it would not be permitted development.
27. In reference to the main issue, the proposal would harm the character and appearance of the surrounding area. It would conflict with CS Policy CS2, Saved Policies EV/1 and H/17 of the LP and ELP Policy DS5 which, amongst other things, require developments to make a positive contribution to Charnwood and to respect and enhance the character of the area. It would also conflict with the Charnwood Design Supplementary Planning Document, adopted 2020, and the National Design Guide. It would comply with paragraph 139 of the Framework that requires development that is not well designed to be refused.

Appeal B: Other Matters

28. Concerns regarding the Council's handling of, and delays in the validation of, the planning application are not material to the determination of the appeal. While the Council did not receive any objections to the proposal, it must be determined against the policies in the development plan whereby design can be a subjective matter. There are material differences between the proposed box dormer and the existing box dormer and therefore, it is not erroneous for the Council to have come to a different view.

Appeal A: Conclusion

29. For the reasons given above, I conclude that Appeal A should partly succeed. I will grant a new planning permission without one of the disputed conditions but reinstating those disputed conditions I consider to be reasonable and

necessary, together with any undisputed conditions that are still subsisting and capable of taking effect.

Appeal B: Conclusion

30. For the reasons set out above, having regard to the development plan as a whole and all other material considerations, I conclude that Appeal B should be dismissed.

A Berry

INSPECTOR

Appeal A – Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (110), Proposed Site Plan (109), Proposed Plans – Ground and First Floor (104), Proposed Plans – Second Floor and Roof Plans (105), Proposed Elevations NE and SW (106), Proposed Elevations NW and SE (107).
- 2) The facing materials to be used in the construction of the development hereby permitted, shall match as closely as possible those of the existing building.
- 3) A minimum of 2 car parking spaces, excluding the garage, shall remain available for the parking of vehicles within the curtilage of the dwelling. These spaces shall be of a hard bound material and shall have a minimum width of 2.4m and a minimum length of 5.5m. These spaces shall always remain available for the parking of vehicles and shall not therefore be used for any other purpose, at any time.
- 4) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order, with or without modifications), no openings or windows shall be inserted in the northwestern (side) elevation of the approved dormer window to the existing garage.

*****End of Conditions*****